



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1998

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-0784

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113491.

The City of El Paso Police Department (the "department") received a request, from an attorney, concerning "certain records which [the requestor] identifies as being connected to an investigation of an expunged [department] file."¹ Specifically, the requestor requests the following records from the department's investigation file:

- 1) The audit of the computer records for the months of June 1996 through January 1997 indicating the dates on which the file referenced was accessed and/or printed out and by whom the access was effected;
- 2) A copy of the Order Expunging this record; and
- 3) The date or dates on which the computer record was amended to reflect the expungement.

In response to the request, you submitted to this office for review the information which you assert is responsive. You claim that the criminal investigatory records are excepted from

¹We note that to the extent that the pending request for information raises questions of fact, this office is unable to resolve such questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990).

disclosure by section 552.108 of the Government Code, and section 552.101, in conjunction with article 55.04 of the Code of Criminal Procedure. We have considered the exceptions and arguments you have raised and have reviewed the information at issue.

Initially, we address the department's arguments that as "all information relating to [a certain named individual] has been removed from [the department's] computer, the police department cannot locate any records that may still remain in the system." In Open Records Decision No. 457 (1987), this office addressed the effect of an expunction order pursuant to Chapter 55 of the Code of Criminal Procedure which provides for the expunction of criminal records.² Article 55.03 prohibits the release or dissemination of records which were expunged by court order.

Since it appears that the department has complied with the expunction order, and, consequently, no longer possesses the information encompassed by the court order, the department is not required by chapter 552 of the Government Code to produce the requested information that is subject to the expunction order. *See* Open Records Decision No. 605 (1992) (governmental body has no duty to disclose information it does not possess).

We next consider whether section 552.108 excepts from required public disclosure any of the submitted information. The Seventy-fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

²After entry of an expunction order, "the release, dissemination, or use of the expunged records and files for any purpose is prohibited. . . ." Code Crim. Proc. art. 55.03(1).

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain that the requested information "is part of the evidence in the pending investigation," thus it concerns an active and open criminal investigation. Because you have shown that the release of the requested information would interfere with the detection, investigation or prosecution of crime, we conclude that the submitted information may be withheld under section 552.108(a)(1). *See* Open Records Decision No. 216 (1978). You may choose, however, to release all or part of the information at issue that is not otherwise confidential by law.³ Gov't Code § 552.007.

As we resolve your request under section 552.108, we need not address your claimed exception under section 552.101, in conjunction with Article 55.04 of the Code of Criminal Procedure at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

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³However, we note that some of the requested information may be confidential. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

Ref: ID# 113491

Enclosures: Submitted documents

cc: Mr. Mark G. Briggs
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(w/o enclosures)